

# **EXHIBIT C**

Dwight Yellen (DY 6547)  
BALLON STOLL BADER & NADLER, P.C.  
1450 Broadway - 14<sup>th</sup> Floor  
New York, NY 10018  
212.575-7900

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

CYBER CHAMPION INTERNATIONAL, LTD.,                      07 Civ. 9503 (LAK) (DFE)

Plaintiff,

- against -

CARLOS FALCHI, MARCOS FALCHI and                      (Jury trial demanded)  
XYZ COMPANIES,

Defendants.

-----X

**ANSWER & COUNTERCLAIMS**

Defendant Carlos Falchi ("Carlos"), by his undersigned  
counsel, answers the complaint and counterclaims, upon  
information and belief, as follows:

1. Admits the allegations in this numbered paragraph  
of the complaint.

2. Admits the allegations in this numbered paragraph  
of the complaint.

3. Admits the allegations in this numbered paragraph  
of the complaint.

4. Admits the allegations in this numbered paragraph  
of the complaint.

5. Admits the allegations in this numbered paragraph

of the complaint.

6. Denies the allegations in this numbered paragraph of the complaint, except admits that Carlos consented to the jurisdiction of this Court.

7. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

8. Admits the allegations in this numbered paragraph of the complaint.

9. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

10. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

11. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

12. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

13. Denies the allegations in this numbered paragraph of the complaint.

14. Denies the allegations in this numbered paragraph

of the complaint.

15. Admits the allegations in this numbered paragraph of the complaint.

16. Admits the allegations in this numbered paragraph of the complaint.

17. Admits the allegations in this numbered paragraph of the complaint.

18. Denies the allegations in this numbered paragraph of the complaint.

19. Denies the allegations in this numbered paragraph of the complaint.

20. Denies the allegations in this numbered paragraph of the complaint.

21. Denies the allegations in this numbered paragraph of the complaint.

22. Denies the allegations in this numbered paragraph of the complaint.

23. Denies the allegations in this numbered paragraph of the complaint, except admits the notice is annexed to the complaint.

24. Denies the allegations in this numbered paragraph of the complaint.

25. Denies the allegations in this numbered paragraph of the complaint.

26. Denies the allegations in this numbered paragraph of the complaint, except admits that a copy of the email is annexed to the complaint.

27. Admits the allegations in this numbered paragraph of the complaint.

28. Denies the allegations in this numbered paragraph of the complaint.

29. Admits the allegations in this numbered paragraph of the complaint.

30. Denies the allegations in this numbered paragraph of the complaint, except admits that Plaintiff filed an opposition in the PTO.

31. Denies the allegations in this numbered paragraph of the complaint, except admits the notices are annexed to the complaint.

32. Denies the allegations in this numbered paragraph of the complaint.

33. Denies the allegations in this numbered paragraph of the complaint.

34. Repeats his responses as set forth in the previous paragraphs.

35. Denies the allegations in this numbered paragraph of the complaint.

36. Denies the allegations in this numbered paragraph

of the complaint.

37. Denies the allegations in this numbered paragraph of the complaint.

38. Denies the allegations in this numbered paragraph of the complaint.

39. Repeats his responses as set forth in the previous paragraphs.

40. Denies the allegations in this numbered paragraph of the complaint.

41. Denies the allegations in this numbered paragraph of the complaint.

42. Denies the allegations in this numbered paragraph of the complaint.

43. Denies the allegations in this numbered paragraph of the complaint.

44. Denies the allegations in this numbered paragraph of the complaint.

45. Repeats his responses as set forth in the previous paragraphs.

46. Denies the allegations in this numbered paragraph of the complaint.

47. Denies the allegations in this numbered paragraph of the complaint.

48. Denies the allegations in this numbered paragraph

of the complaint.

49. Repeats his responses as set forth in the previous paragraphs.

50. Denies the allegations in this numbered paragraph of the complaint.

51. Denies the allegations in this numbered paragraph of the complaint.

52. Repeats his responses as set forth in the previous paragraphs.

53. Denies the allegations in this numbered paragraph of the complaint.

54. Denies the allegations in this numbered paragraph of the complaint.

55. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

56. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

57. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the complaint.

58. Denies knowledge or information sufficient to respond to the allegations in this numbered paragraph of the

complaint.

59. Denies the allegations in this numbered paragraph of the complaint.

**FIRST AFFIRMATIVE DEFENSE**

60. The complaint fails to state a claim for relief

**SECOND AFFIRMATIVE DEFENSE**

61. Plaintiff's claims are barred because plaintiff is guilty of unclean hands

**THIRD AFFIRMATIVE DEFENSE**

62. Plaintiff's claims are barred because plaintiff is guilty of laches.

**FOURTH AFFIRMATIVE DEFENSE**

63. Plaintiff's claims are barred because plaintiff has acquiesced in the use of the mark.

**FIFTH AFFIRMATIVE DEFENSE**

64. Plaintiff's claims are barred because plaintiff fraudulently obtained or continued its registration.

**SIXTH AFFIRMATIVE DEFENSE**

65. Plaintiff's claims are barred because plaintiff has abandoned the mark.

**SEVENTH AFFIRMATIVE DEFENSE**

66. Plaintiff's claims are barred because plaintiff is estopped from challenging Carlos's use of the mark.

**Facts common to all Counterclaims**



67. During the period subsequent to plaintiff's alleged termination of the alleged license agreement, Carlos made payments to plaintiff as provided in the alleged license agreement.

68. These payments were accepted by plaintiff without objection or reservation.

69. Plaintiff had express knowledge of the use of the marks about which it complains.

70. Carlos provided a reconciliation and proffered payment, pursuant to the reconciliation, to plaintiff.

71. In 2007 Carlos advised plaintiff that he had an opportunity to grow the business concerning the Licensed Products under the alleged license agreement.

72. By virtue of falsely misrepresenting and maintaining that the alleged license agreement was terminated and pursuing the instant action Carlos lost the opportunity to grow the business concerning the Licensed Products under the alleged license agreement.

73. These actions caused Carlos damage in an amount that presently cannot be determined but which is reasonably believed to exceed \$5,000,000.

#### **FIRST COUNTERCLAIM**

74. Plaintiff breached the alleged license agreement.

75. The breach caused Carlos damage in an amount that

presently cannot be determined but which is reasonably believed to exceed \$5,000,000.

**SECOND COUNTERCLAIM**

76. Plaintiff has been unjustly enriched by retaining funds remitted to it.

77. Plaintiff has wrongfully retained funds in an amount that presently cannot be determined but which is reasonably believed to exceed \$5,000,000.

**THIRD COUNTERCLAIM**

78. Plaintiff knew of the proposed business opportunity that Carlos had.

79. Plaintiff intentionally interfered with the proposed business opportunity that Carlos had.

80. Had plaintiff not interfered the proposed business opportunity would have been entered into by and between Carlos and a third party.

81. Plaintiff's interference was done in a wrongful manner.

82. Plaintiff's interference was done in a manner cloaked as a legal right.

83. Plaintiff's wrongful interference caused Carlos damage in an amount that presently cannot be determined but which is reasonably believed to exceed \$5,000,000.

**WHEREFORE**, Carlos demands judgment dismissing the

complaint; awarding damages on the counterclaims in an amount that presently cannot be determined but which is reasonably believed to exceed \$5,000,000; interest, costs, disbursements, attorneys fees; and such relief as this Court deems just and proper.

Dated: New York, New York  
14 January 2008

BALLON STOLL BADER & NADLER,  
P.C.

By:   
Dwight Yellen (DY 6547)

Attorneys for Defendant  
Carlos Falchi  
1450 Broadway - 14<sup>th</sup> Floor  
New York, New York 10018  
T. 212.575-7900  
F. 212.764-5060  
E. [dyellen@ballonstoll.com](mailto:dyellen@ballonstoll.com)

To: Harlan M. Lazarus, Esq  
LAZARUS & LAZARUS, P.C.  
240 Madison Avenue - 8<sup>th</sup> Floor  
New York, New York 10016

Brian Gaynor, Esq.  
MALDJIAN & FALLON LLC  
365 Broad Street - 3<sup>rd</sup> Floor  
Red Bank, New Jersey 07701

**AFFIRMATION/CERTIFICATION OF SERVICE**

DWIGHT YELLEN, an attorney duly admitted to practice before the Courts of the State of New York and New Jersey, affirms, declares and certifies under penalty of perjury:

I am not a party to the action, am over 18 years of age, am a member of Ballon Stoll Bader & Nadler, P.C. and have an office at 1450 Broadway, New York, New York 10018 and 505 Main Street, Hackensack, New Jersey 07601. On January 14, 2008 I served or caused to be served a true copy of the annexed papers in the following manner:

☐ By hand delivery,

☐ By overnight courier,

☐ By telefax,

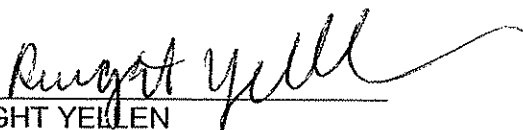
☒ Fax Numbers: \_\_\_\_\_

☒ By regular mail, in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Harlan M. Lazarus, Esq.  
LAZARUS & LAZARUS, P.C.  
240 Madison Avenue – 8<sup>th</sup> Floor  
New York, New York 10016

Brian Gaynor, Esq.  
MALDJIAN & FALLON LLC  
365 Broad Street – 3<sup>rd</sup> Floor  
Red Bank, New Jersey 07701

Dated: New York, New York  
January 14, 2008

  
DWIGHT YELLEN